

Decision 02-11-064 November 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Preferred Carrier Services, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Provider of Facilities-Based Local Exchange Telecommunications Services Within the State of California.

Application 02-08-012
(Filed August 9, 2002)

O P I N I O N

I. Summary

Preferred Carrier Services, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange telecommunications services. By this decision, we grant the requested authority subject to the terms and conditions set forth below.

II. Background

In prior decisions we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), Roseville Telephone Company (RTC), and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a Texas corporation, seeks authority to provide limited facilities-based and resold local exchange services as a competitive local carrier (CLC) throughout Pacific and Verizon's service territories. On July 17, 1996 we

granted applicant a CPCN to provide inter Local Access Transport Areas (LATA) and intraLATA services as a switchless reseller. On January 7, 1998 we granted Applicant a CPCN to provide competitive local exchange services on a resold basis. A complete copy of the 1998 decision and an incomplete copy of the 1996 decision were attached to this application.

Applicant's principal place of business is located at 14687 Midway Road, Addison, Texas 75001.

III. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide facilities-based and resold local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.¹ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.² Applicant provided bank statements that demonstrate that it has sufficient cash to satisfy the financial requirement, including any required deposits.

¹ The financial requirement for CLCs is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041.

² The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

IV. Technical Qualifications and Other Matters

A. Technical Qualifications

Applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its officers that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

B. Prior Bankruptcy

Applicant states that Applicant, its parent corporation, Phones For All, Inc. and a sister corporation, Preferred Carrier Services of Virginia, Inc., filed for reorganization under Chapter 11 of the United State Bankruptcy Code on November 18, 1999. The three filings were consolidated into a single case, which concluded with the discharge of the debtors on December 22, 2000.

C. Prior Administrative Proceedings

Applicant states that the New York Public Service Commission (NYPSC) issued a “Show Cause” order to Applicant in 1997 in response to complaints received by the NYPSC alleging “slamming” by Applicant. Applicant voluntarily discontinued the marketing program that was the source of the complaints and on February 26, 1998 the NYPSC concluded the proceeding without imposing any additional penalties on Applicant.

Also in 1997, the Florida Public Service Commission initiated an investigation of Applicant’s alleged “slamming” of Florida telephone customers. On December 7, 1998 the investigation was settled by Applicant’s agreement to cease the marketing programs that generated the complaints and to voluntarily contribute \$50,000 to the state’s General Revenue Fund.

V. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. Applicant shall correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

VI. California Environmental Quality Act (CEQA)

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant represents that it will not be constructing any facilities for the purpose of providing local exchange services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority, and submit to any required CEQA review, before it can construct facilities other than equipment to be installed in existing buildings or structures.

VII. Categorization and Need for Hearings

In Resolution ALJ 176-3093 dated August 22, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

VIII. Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the

otherwise applicable 30-day period for public review and comment is being waived.

IX. Conclusion

We conclude that the application conforms to our rules for authority to provide competitive local exchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein. However, we use this occasion to place Applicant on notice that its history of financial instability and consumer complaints is troublesome to us and we will monitor Applicant's performance to insure that the interests of California telephone customers are protected.

X. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Karl Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on August 15, 2002.
2. No protests have been filed.
3. A hearing is not required.
4. In prior decisions the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, RTC and CTC.
5. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

7. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

Application, its parent and an affiliated company filed for bankruptcy in 1999. All debtors were discharged.

Applicant has been the subject of investigations of slamming in New York and Florida and claims to have discontinued the marketing program that led to these investigations.

8. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for those deficiencies, its draft tariffs complied with the Commission's requirements.

9. Applicant will not be constructing facilities to provide telecommunications services other than equipment to be installed in existing buildings or structures.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

3. Public convenience and necessity require that Applicant's competitive local exchange service be subject to the terms and conditions set forth herein.

4. Since Applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant effect on the environment.

5. The application should be granted to the extent set forth below.

6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment A to this decision.

8. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Preferred Carrier Services, Inc. (Applicant) to operate as a limited facilities-based and resale provider of competitive local exchange services subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company and Verizon California Inc.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

4. The certificate granted, and the authority to render service under the rates, charges, and rules authorized, will expire if not exercised within 12 months after the effective date of this order.

5. The corporate identification number assigned to Applicant, U-5641-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

8. Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures.

9. This application is closed.

This order is effective today.

Dated November 21, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

MICHAEL R. PEEVEY

Commissioners

Commissioner Geoffrey F. Brown, being necessarily
absent, did not participate.

Attachment A
Page 1

List of deficiencies in tariffs filed by Preferred Carrier Services, Inc. in A.02-08-012 to be corrected in its tariff compliance filing.

1. Include a title page for the CLC tariff. Refer to G.O.96-A page 3.
2. Sheet 6, Rule 3: Include the 2nd paragraph from Rule 2 of Appendix B of D.95-07-054 in the CLC tariff.
3. Sheet 10, Rule 7: State in the tariff that in the event a customer requests services in addition to basic service, the average bill will reflect the aggregate services requested by the customer. Refer to Rule 5 of Appendix B of D.95-07-054.
4. Sheet 11, Rule 7B(1): State in the tariff that the CLC cannot require advance payments for usage.
5. Sheet 19, Rule 9: Include Rule 9 of Appendix B of D.95-07-054 in the CLC tariff.
6. Sheet 19, Rule 9C: Include the fees and surcharges show in Attachment B to this decision.
7. Sheet 20, Rule 9D: Any disputed amounts or claims can be made in writing within 3 years from the date of the invoice, not 30 days. Refer to PU Code Section 736.
8. Sheet 21, Rule 10: Change line 4 of the paragraph to state "...service may be subject to disconnection if the CLC has notified the customer by written notice of such delinquency and impending termination." Refer to Rule 8B of Appendix B of D.95-07-054. Also include Rule 8E and 8G from Appendix B of D.95-07-054 in the CLC tariff.
9. Sheet 23, Rule 11: If CLC provides optional features with a particular service, the CLC tariffs shall identify the optional features as such, and shall describe the means by which a customer elects or rejects such features. Also, CLCs with annual gross intrastate revenues over \$10 million are required to have on-line tariffs with a hyperlink subject index. Refer to D.01-07-026.
10. Sheet 24, Rule 12: Tariff must be available for inspection at an office in California.

11. Sheet 25, Rule 14: State in the tariff that the CLC concurs with Pacific Bell or Verizon's Limitation of Liability tariffs regarding credit for service interruptions. Refer to D.95-12-057.
12. Sheet 25, Rule 15: Remove Rule 15A, 15F and 15G from the tariff. The CLC must concur with Pacific Bell or Verizon's Limitation of Liability tariffs. Refer to D.95-12-057.
13. Include rule on how telephone directories will be provided to residential and business customers.
14. The CLC must have a demarcation tariff or concur in another company's tariffs.
15. Include Rule 7 of Appendix B of D.95-07-054 in the CLC tariff.
16. Remove the Los Angeles Consumer Affairs Branch address on pages 8, 21 and 32.
17. Schedule 3T, Sheet 9: Include the following Income Limitation and rates for ULTS:

<u>Household Size</u>	<u>Income Limitation</u>
1-2	\$19,300
3	22,800
4	27,400
Each additional member	4,600
Establishment	\$10.00
Flat Rate	5.34
Measured Rate	2.85

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND NON-DOMINANT INTEREXCHANGE CARRIERS

1. Applicant shall file a written acceptance with the Director of the Telecommunications Division of the certificate granted in this proceeding.
2. Applicant is subject to:
 - a. The current 1.45% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16594, October 10, 2001);
 - b. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16663, August 22, 2002);
 - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4800);
 - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16550 at 0.360%, October 10, 2001);
 - e. The current 1.42% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16554, October 25, 2001); and
 - f. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16584, October 10, 2001).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- “(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.
- “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- “(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- “(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”
- “(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code § 876.”

4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering

Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

- “5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:
 - “a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day’s notice.
 - “b. Uniform rate reductions for existing services shall become effective on five (5) days’ notice.
 - “c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days’ notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
 - “d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days’ notice. Customer notification is not required for such minor rate increases.
 - “e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
 - “f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days’ notice.”

5. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff

filings incorporating these deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

6. Applicant shall file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant shall provide the Manager of the Consumer Affairs Branch with the name and phone number of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

8. Applicant shall notify the Director of the Telecommunications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify the Director of the Telecommunications Division in writing of the date interLATA) service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.³

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's

³ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

12. Applicant shall file an annual report with the Director of the Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
13. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.
14. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.
15. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.
16. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).
17. Applicant is exempt from Pub. Util. Code §§ 816-830.
18. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.
19. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C ANNUAL REPORT

An original and two copies shall be filed with the Telecommunications Division of the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. The number and date of the Commission decision granting the Utility's CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-1961.

(END OF ATTACHMENT C)